

## Judge Rules That Fighting Climate Change Isn't Optional for Washington State



The kids who sued the state over climate action didn't win, but their case just established an important local precedent for climate change law. SB

In a major case [filed by teens and pre-teens](#) against the Washington State Department of Ecology, a judge ruled late last night that it's the state's legal duty to take action on climate change.

At the same time, the judge **denied the kids' request** that the Department of Ecology take up a new rule-making process to set tougher limits on greenhouse gas emissions based on the "best available science." Here's why: After the case was filed, Washington Governor Jay Inslee directed the department to come up with a [rule capping emissions](#). The judge ruled that the Department of Ecology has a legal responsibility to regulate greenhouse gas emissions—not just a discretionary one that's subject to political whims—but didn't grant the kids' request for another process on top of the existing one. In the view of the court, Inslee had to direct Ecology to take action (despite the griping from Republican legislators) but the type of action to take is still up to Ecology.

Nevertheless, petitioners for Our Children's Trust and their lawyers are hailing the judge's opinion as a groundbreaking victory. It's only the **second legal opinion in the United States** that has found that climate change poses a real and immediate risk to the public interest, and that as managers of resources held "in trust" for the public, the state has a legal obligation to fight climate change.

The decision is important because it shows that state courts can **localize responsibility** for a global crisis. When the Senate Environment and Public Works Committee has a chairman [who brings a snowball to chambers](#) to prove that man-made climate change doesn't exist and state legislatures fail to pass climate policy, that kind of precedent might come in handy. Still, the decision doesn't have any bearing on what, exactly, the state's climate change action

should consist of, only that it must consist of something.

"I would say that this is a **partial victory**, but it doesn't direct the state of Washington to ratchet up its ambition," explained Michael Burger, executive director of the Sabin Center for Climate Change Law at Columbia University. "But I think it's definitely a step in the right direction and it does lend support that there are legal, as well as political, as well as social reasons to fight climate change. Fighting climate change is a legal duty."

If you're interested in the legalese, here's how the argument worked:

King County Superior Court's Judge Hollis Hill ruled that the state had a responsibility to regulate greenhouse gas emissions under the Clean Air Act, but she also ruled that the state *must* take action on climate change because of citizens' constitutional rights and something called the "public trust doctrine."

Traditionally, the doctrine has protected natural resources like "navigable waters," which are held "in trust" by the state for the public's interest.

[Our Children's Trust](#), which has filed a number of lawsuits in other states as well as a [federal case](#), argued that the state also had a responsibility to protect the atmosphere. The Department of Ecology disagreed, and said that the atmosphere extended beyond the state's purview.

But Judge Hill sided with the kids. She wrote:

"...this misses the point since current science makes clear that **global warming is impacting the acidification of the oceans** to alarming and dangerous levels, thus endangering the bounty of our navigable waters. Ecology's own Preproposal Statement of Inquiry identifies as reasons for the ongoing rule making 'loss of coastal lands due to sea level rise' and an 'increase in debases and mortality in freshwater fish (salmon, steelhead and trout) because of warmer water temperatures in the summer and more fluctuation of water levels.'"

The judge continued:

"The navigable waters and the atmosphere are intertwined and to argue a separation of the two, or to argue that GHG emissions do not affect navigable waters is nonsensical."

Judge Hill also underlined the inadequacy of current regulations:

"The regulations currently in place specify technological controls of a small number of air pollution sources while **not even addressing transportation** which as of 2010 made up 44% of annual total GHG emissions in Washington State."

Hill's opinion marks a major advance in a new legal strategy to fight climate change ahead of the Paris climate talks. According to Ross Macfarlane, senior advisor at Climate Solutions, it's reason to take heart.

"It certainly gives those of us who passionately care about these issues hope that we're starting to see chinks in the armor of fossil fuel companies and their apologists [who say] that we don't need to make any change, that we're going to rely on existing ways of doing things, and let's never recognize what the science requires," he said.